



**State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-5171



Terry L. Corrigan  
Box 145-A1  
Jefferson, NH 03583

Re: Kennett Road, Jefferson, NH

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
NO. AF 01-004**

**January 17, 2001**

**I. Introduction**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Terry L. Corrigan, pursuant to RSA 149-M and Env-Wm 100-300 & 2100-3700. The Division is proposing that fines totaling \$22,000 be imposed against Terry L. Corrigan for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. Parties**

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Terry L. Corrigan ("Mr. Corrigan") is an individual having a mailing address of Box 145-A1 Jefferson, NH 03583 .

**III. Summary of Facts and Law Supporting Claims**

1. RSA 149-M authorizes the Department of Environmental Services ("DES") to regulate the management, transportation and disposal of solid waste in New Hampshire. RSA 149-M:7 authorizes DES to adopt rules to implement solid waste management standards. Pursuant to this authority, DES has adopted Env-Wm 100-300 and Env-Wm 2100-3700 ("Solid Waste Rules").
2. RSA 149-M:16 authorizes the Commissioner of DES to impose administrative fines of up to \$ 2,000 per offense for violations of RSA 149-M or rules adopted pursuant thereto. The Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. William and Doris Gray are the owners of land at Kennett Road, Jefferson, NH, more particularly described in a deed recorded in the Coos County Registry of Deeds at Book 676, Page 680, and identified on the Jefferson Tax Map as Map 14, Lot 19A ("the Site").
4. DES personnel met with Mr. Corrigan on June 22, 2000. Mr. Corrigan was demolishing a building on Wentworth Avenue in Berlin, NH. Mr. Corrigan was informed at this time that solid

waste must be disposed at a permitted solid waste facility. Mr. Corrigan told DES personnel that he would separate the clean wood and dispose the solid waste at North Country Environmental Services in Bethlehem. Mr. Corrigan did provide copies of receipts for the disposal of some of the construction and demolition debris to DES.

5. On July 14, 2000, DES received a complaint alleging that construction and demolition debris from a demolished building in Berlin was being buried at the Site.

6. On July 17, 2000, DES personnel investigated the complaint by conducting an inspection ("July Inspection") of the Site. The purpose of the July Inspection was to determine Mr. Corrigan's compliance status relative RSA 149-M and the Solid Waste Rules.

7. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material...."

8. RSA 149-M:4, XXI defines "refuse" in part as "any waste product... which is composed of wholly or partly of such materials as ... brick, plaster or other waste matter resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

9. Env-Wm 102.42 defines "construction and demolition debris" as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks."

10. During the July Inspection, DES personnel observed an area covered by wood chips at the Site. DES personnel observed construction and demolition debris consisting of brick, charred wood, vinyl siding, a shutter, green asphalt roofing, Styrofoam insulation covered with a layer of aluminum foil, a piece of sink drain pipe, and painted clapboards mixed in with the wood chips. DES personnel dug a hole approximately 2 feet deep and found a mix of ash, charred wood, and wood chips.

11. The construction and demolition debris was consistent with the construction and demolition debris observed by DES personnel at the Wentworth Avenue, Berlin, NH site.

12. The construction and demolition debris consisting of brick, charred wood, vinyl siding, a shutter, green asphalt roofing, Styrofoam insulation covered with a layer of aluminum foil, a piece of sink drain pipe, ash, and painted clapboard observed by DES personnel at the Site on July 17, 2000, are solid wastes as defined by RSA 149-M:4,XXII.

13. RSA 149-M:4, IX defines a "facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment, or disposal of solid waste."
14. The Site constitutes a "facility" as defined by RSA 149-M:4, IX.
15. Env-Wm 102.116 defines "owner" as "a person who owns a facility or part of a facility."
16. William and Doris Gray, the owners of the Site, are the owners of a solid waste facility as defined by RSA 149-M:4, IX.
17. RSA 149-M:9, I states that "No person shall construct, operate, or initiate closure of a public or private facility without first obtaining a permit from [DES]."
18. A review of DES files show that the Grays have neither applied for nor hold a permit to operate a solid waste facility at any New Hampshire location.
19. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or dispose of solid waste at, any facility other than an approved facility."
20. On July 17, 2000, DES personnel spoke with Doris Gray, an owner of the Site, relative to the solid waste buried at the Site. Mrs. Gray informed DES personnel that Terry L. Corrigan had brought the solid waste onto the Site, which was confirmed by Mr. Corrigan.
21. Terry L. Corrigan transported solid waste to and disposed of solid waste at an unpermitted solid waste facility.
22. On August 19, 2000, in the presence of DES personnel, Mr. Gray dug several test pits at the Site. Solid waste was uncovered approximately one foot below grade and extended approximately four feet below grade. The solid waste consisted of, but was not limited to, lumber, charred lumber, brick, vinyl siding, interior paneling, painted or treated wood, fiberglass and Styrofoam insulation, wiring, metal, cable, and asphalt-treated paper.
23. On August 19, 2000, DES personnel advised Mr. Corrigan that the solid waste he transported to and disposed at the Site had to be removed and that DES personnel wanted to be present during the removal. Mr. Corrigan and Mr. Gray agreed that the removal of the solid waste would be completed by October 31, 2000.
24. DES personnel issued a Report of Initial Complaint Investigation ("RICI") to Mr. and Mrs. Gray on August 19, 2000, instructing them to cease operating an unpermitted solid waste facility, cease transporting solid waste to an unpermitted solid waste facility, and remove all solid waste located at the Site to a permitted solid waste facility by October 31, 2000.
25. A RICI was also issued to Mr. Corrigan on August 19, 2000, instructing him to cease transporting solid waste to an unpermitted solid waste facility and to remove all solid waste located at the Site to a permitted solid waste facility by October 31, 2000.
26. On November 3, 2000, DES personnel conducted a follow-up inspection of the Site. DES

personnel met with Mrs. Gray and she informed DES personnel that the solid waste had not yet been removed because Mr. Corrigan controlled the equipment that would need to be used to excavate the solid waste.

27. On November 29, 2000, DES issued Letter of Deficiency No. WMD 00-032 ("LOD") to Mr. Corrigan, requesting him to cease transporting solid waste to an unpermitted solid waste facility, contact DES to schedule the removal of the solid waste located at the Site, and remove all solid waste at the Site by December 22, 2000. On the same date, DES issued LOD No. WMD 00-033 to Mr. and Mrs. Gray, requesting them to cease operating an unpermitted solid waste facility, contact DES to schedule the removal of the solid waste located at the Site, and remove all solid waste at the Site by December 22, 2000. A copy of the LOD issued to the Grays was enclosed with the LOD sent to Mr. Corrigan, and a copy of the LOD issued to Mr. Corrigan was enclosed with the LOD sent to the Grays.

28. On December 2, 2000, Mrs. Gray signed for receipt of LOD No. WMD 00-033

29. On December 18, 2000, LOD No. WMD 00-032 was returned to DES unclaimed

30. On December 11, 2000, DES personnel conducted a follow-up inspection ("December 11 Inspection") of the Site. During this inspection, DES personnel observed Mr. Gray excavating the buried solid waste. DES personnel informed Mr. and Mrs. Gray that if they excavated the solid waste and staged it on the Site that DES personnel would consider them to have done their share of removing the solid waste.

31. During the December 11 Inspection, Mr. Corrigan informed DES personnel that some of the solid waste would be removed by Friday, December 15, 2000. DES personnel informed Mr. Corrigan that if he could not dispose of all the solid waste located at the Site by December 22, 2000, that Mr. Corrigan would need to contact DES personnel and arrange a schedule by which he would remove all of the solid waste.

32. On December 12, 2000, DES personnel returned to the Site and observed that all of the solid waste had been excavated and placed in a pile at the Site. The pile measured approximately 60'x 25'x 8'.

33. On December 22, 2000, DES personnel conducted a follow-up inspection ("December 22 Inspection") of the Site. DES personnel observed that the pile remained undisturbed since the December 12 Inspection. DES personnel spoke with Mrs. Gray. Mrs. Gray informed DES personnel that Mr. Gray gave Mr. Corrigan a copy of Mr. Corrigan's LOD No. WMD 00-032. Mrs. Gray stated that Mr. Gray observed Mr. Corrigan open LOD No. WMD 00-032 and scan the LOD.

#### **IV. Violations Alleged**

1. Terry L. Corrigan has violated RSA 149-M:9, II by transporting solid waste to and disposing of solid waste at an unpermitted solid waste facility.

## V. Proposed Administrative Fines

1. For the violation identified in IV.1, above, Env-C 612.11(b) specifies a fine of \$2,000 per 20 cubic yards of debris transported or disposed. The debris pile excavated on December 11 and December 12, 2000 measured approximately 440 cubic yards. Approximately 50% of the pile is demolition debris (220 cubic yards) and the remainder is soil and rock. For the violation noted above, the Division is seeking a total fine of \$22,000.

**The total fine being sought is \$ 22,000.**

## VI. Hearing, Required Response

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, February 19, 2001 at 9:00 a.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, you are required to respond to this notice.** Please respond **no later than February 9, 2001**, using the enclosed form as follows:

1. If you plan to attend the hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.
2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

**If you wish to have a hearing but are unable to attend as scheduled, you must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled.** If you do not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env-C 204.09.

## VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- \* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:
- 1 The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.
  - 2 At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
  - 3 You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
  - 4 Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.


\*\*\*\*\***IMPORTANT NOTICE**\*\*\*\*\*

**The hearing that has been scheduled is a formal hearing.** The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

**If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

  
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Philip J. O'Brien, Ph. D., Director  
Waste Management Division

Enclosure (*NHDES Fact Sheet #CO-2 1999*)

cc: Gretchen Rule, DES Enforcement Coordinator  
Susan Alexant, DES Hearings and Rules Attorney  
Tammy Calligandes, DES/WMD/SIS  
Michael Galuska, DES/WMD  
Town of Jefferson, NH